

WAC 458-20-131 Games of chance. (1) Introduction. This rule explains the business and occupation (B&O), retail sales, and use tax reporting requirements of persons operating pull-tab and punch board games. It also explains the application of tax to persons conducting amusement games, card games, bingo games, and raffles. Nonprofit organizations conducting these games as a part of their fund-raising activities should also refer to RCW 82.04.3651, 82.08.02573, and WAC 458-20-169 (Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops) to determine if a B&O, retail sales, or use tax exemption is available for their activities.

Persons operating or selling these types of games should also be aware that the Washington state gambling commission regulates these activities. These persons should refer to chapter 9.46 RCW (Gambling--1973 Act), Title 230 WAC (Gambling commission), and/or contact the Washington state gambling commission with any questions regarding their licensing and reporting responsibilities with the commission.

(2) Measure of tax. The business and occupation (B&O) and retail sales taxes apply to income as described below. These guidelines apply equally whether the game is mechanically or electronically operated.

(a) Pull-tab, punch board, and bingo games. Persons operating pull-tab, punch board, or bingo games are taxable under the service and other activities B&O tax classification upon all "increases" arising from the conduct of such games. The term "increases" as used in this subsection, means gross gambling receipts less the monetary value or, in the case of merchandise, the actual cost, of any prizes that are awarded. The actual cost of the merchandise is the amount actually paid by the operator without any markup. In the case of donated merchandise, the operator may deduct the fair-market value of the merchandise. While the cost of merchandise prizes may be deducted, other costs of operating the game, including the amount paid for the purchase of the actual game (e.g., a punch board), may not be deducted.

Prior to April 1, 1999, operators of pull-tab and punch board games awarding merchandise as prizes were considered to be selling the prizes for the gross income derived from the games. As a result, this income was subject to the retailing B&O and retail sales taxes.

(b) Card games. The fees charged to card players as a condition for their participation in card games, whether the fees are based on time, on a per-hand basis, or on a percentage of the wagered amount (commonly referred to as a "rake"), are subject to the service and other activities B&O tax. In those cases where the operator of the card room participates in the card game as a house or central bank, the measure of tax is the amount of winnings less the amount of losses.

(c) Raffles. Effective April 1, 1999, persons conducting raffles are subject to the service and other activities B&O tax upon all "increases" (as defined in subsection (2)(a) above) arising from the conduct of the raffles. Prior to this date, the measure of tax was the gross income from the sale of raffle tickets or chances without any deduction for the value or cost of any prizes awarded.

(d) Amusement games. The gross receipts derived from the operation of amusement games as defined in RCW 9.46.0201 are subject to the service and other activities B&O tax. The cost of any prizes awarded may not be deducted from the measure of tax.

(i) RCW 9.46.0201 defines amusement games to be a game played for entertainment in which:

(A) The contestant actively participates;

- (B) The outcome depends in a material degree upon the skill of the contestant;
- (C) Only merchandise prizes are awarded; and
- (D) The outcome is not in the control of the operator.

(ii) Crane machines, coin-toss and dart-toss games at fairs and carnivals, and skill-stop games are examples of games qualifying as amusement games under RCW 9.46.0201. Persons operating coin-operated games that do not qualify under the definition of amusement games in RCW 9.46.0201 (e.g., pinball, video, and pool games) should refer to WAC 458-20-187 (Coin-operated vending machines, amusement devices and service machines) for an explanation of their tax reporting responsibilities.

(e) **Sales of foods and beverages.** Sales of foods, beverages, and other tangible personal property by persons operating or conducting any of the activities described above are retail sales and subject to the retailing B&O and retail sales taxes, unless a specific exemption applies (e.g., see WAC 458-20-124 regarding sales of food and beverages by restaurants, taverns, and similar businesses and WAC 458-20-244 for exemptions available for certain food products). Persons conducting dice games to determine the amount that the customer will pay for food or beverages are subject to tax upon the amount the customer actually pays for the food or drink.

(3) **Merchandise prizes.** Persons operating or conducting any of the activities described in subsection (2) (a) through (d) of this rule are the consumers of any merchandise delivered to the players in the form of prizes or awards. Purchases of this merchandise are purchases at retail and subject to the retail sales tax, unless a specific exemption applies (e.g., see WAC 458-20-244 for exemptions available for certain food products). Purchases of supplies, devices, and other equipment used in the conduct of these games are also subject to the retail sales tax.

(a) If retail sales tax is not collected by the seller, the person conducting these games must remit the retail sales tax (often referred to as deferred retail sales tax) or use tax directly to the department. See also WAC 458-20-178 (Use tax).

(b) Prior to April 1, 1999, operators of punch board and pull-tab games awarding merchandise as prizes were considered to be selling the prizes for the gross income derived from the games. The purchase of the merchandise prizes by the operators of these games were purchases at wholesale and not subject to either the retail sales or use tax.

For the purposes of determining the taxability of merchandise prizes awarded by operators of punch board and pull-tab games that were in operation both before and after April 1, 1999, the operator should remit retail sales or use tax on the value of the prizes awarded on or after April 1, 1999.

[Statutory Authority: RCW 82.32.300. 99-08-090, § 458-20-131, filed 4/6/99, effective 5/7/99; 83-07-034 (Order ET 83-17), § 458-20-131, filed 3/15/83; Order ET 70-3, § 458-20-131 (Rule 131), filed 5/29/70, effective 7/1/70.]